The Comparative Study of Administrative System in Jammu and Kashmir in the Status of State and Union Territory.

SUBMITTED TO

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ABSTRACT:

The issue of comparison has now become very important especially after the abrogation of special status of Jammu and Kashmir that has changed its status from state to Union territory. Therefore I intend to aid this distinct status by bringing the comparison of Jammu and Kashmir during special status and after it's abrogation. The historical view of administrative system of Jammu and Kashmir under the shadow of Article 370, Instrument of Accession- the beginning of relationship with Union by Hari Sing gives a detailed idea about the birth of Article 370. Indra -Sheikh Accord the beginning of new administration in Jammu and Kashmir. Why abrogation gained big attention in the contemporary India, 2019 a turning point in Jammu and Kashmir. Article 370 the only BJP government's manifesto its role in bifurcation. People's reaction towards Indiaas well as towards government after the abrogation of Article 370. The administrative system of Union territory of Jammu and Kashmir and Union territory of ladakh. Why Union territory of Jammuand Kashmir with legislative Assembly and ladakh under direct control, their changes in administrative system. The International reputation of Indian polity particularly in UNSC after repealing of this constitutional act. Global fallout of government's move. Pakistan, China and OIC and status of international relations of India over this move.

INTRODUCTION

Prior to independence Jammu and Kashmir was a princely state ruled by a hereditary Maharaja? At the time of independence in 1947 India was facing the challenge of merging the princely states to Union of India. Like all other states Jammu and Kashmir also had the option of merging with dominion of Pakistan, the dominion of India or claiming itself as an independent state. In the meanwhile on 26 October 1947 the state of Jammu and Kashmir was attacked by Azad Kashmir forces with the help of Pakistan, confronted with the chances of losing Kashmir Maharaja Hari Sing was obliged to seek the help of India for which he had to execute an Instrument of Accession. By way of this accession the dominion of India acquired jurisdiction over the state of with respect to the subjects of Defence, Communication and External Affairs however the provisions of the Indian Constitution were not extended to Jammu and Kashmir.

Later while other states signed an agreement for merger with the Union of India, the state of Jammu and Kashmir was not ripe enough for integration which was the main reason for Article 370. However the father of Indian Constitution BR Ambedkar was against the idea of Article 370 and refused to draft it saying that he was not a **traitor** and Pundit Jawaharlal Nehru the then Prime Minister and Sheikh Abdullah who was then the **sardar-i-Risayat** and Nehru's friend convinced Ambedkar on existence of Article 370 . Finally this Article was drafted by Gopalswami Ayyangar. Although Sheikh Abdullah did not want the provision of Article 370 to be temporary rather he wanted the state of Jammu and to have " Iron Clad Autonomy" but India did not agree to it and kept the provision temporary in hope of integrating Kashmir with India with the passage of time.

Article 370 is enshrined under part 21 of India Constitution that deals with "temporary, transitional and special provisions". The article gives a special status to the state of Jammu and Kashmir except for matters relating to Communication, Defence and External Affairs. The state not only has its own Constitution but also a State Flag and Anthem. The residents of Jammu Kashmir have dual citizenship as they are citizens of the state first and then Indians. Legislative Assembly of the state lives up to the period of six years unlike five years in Indian states

ARTICLE 370

The Article 370 of Indian Constitution had "temporary provisions with respect to the State of Jammu and Kashmir" which gave special powers to the state allowing it to have its own Constitution. Clause 1 (b) of Article 370 gives the parliament the power to make laws only in the matters specified in the instrument of accession and matters with the concurrence of the state. Clause 1 (c) provides for application of Article 1 and 370 of the Indian Constitution in relation to the state of Jammu and Kashmir

The most debated topic of clause (3) of the article, it provides that : Notwithstanding anything in forgoing provisions of this article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify : Provided that the recommendation of Constituent Assembly of the state referred to in clause (2) shall be necessary before the President issues such a notification. The state of Jammu and Kashmir though has managed to secure the biodiversity and ecological balance and the people enjoy many autonomous benefits, however in view of many experts the autonomous nature of the state also affects the people in an adverse miner

Instrument of Accession

With the end of British rule and India gaining independence on 15 August 1947, Jammu and Kashmir along with other Princely states became independent as well. Initially, Jammu and Kashmir ruler Maharaja Hari Sing decided not to join either India or Pakistan and choose to remain independent. However, on 22 October 1947, thousands of armed men backed by Pakistan Army attacked the state from the North forcing Maharaja Hari Sing to seek help from the Indian state and deciding to accede to it. This led to the signing of **Instrument of Accession** between Maharaja Hari Sing and Prime Minister Pandit Jawaharlal Nehru on 26 October, 1947. It was accepted by the then Governor General of India Lord Mountbatten on 27 October. This accession was legally valid as Indian Independence Act of 1947 which was signed by both India and Pakistan, gave sovereignty of the state to Maharaja Hari

Sing after the lapse of British Paramount and Hari Sing could make his sovereign decisions

The US representative Warren Austin seconded this view in the United Nations Security Council where he said that with the accession of Jammu and Kashmir to India this foreign sovereignty went over to India. Under this instrument of accession, Jammu and Kashmir surrendered only three subjects which was Defence, Communication and External Affairs to the India state and earned an assurance from India that the people of Jammu and Kashmir through their own Constituent Assembly would draft their own Constitution

In this respect an important point as highlighted by DD Basu in his magnum opus commentary on the Constitution of India was that while allows the people of Jammu and Kashmir to draft their own Constitution it was promised that the nature of extent of jurisdiction of the Union of India over the state and until the decision of Constituent Assembly of the state , the Constitution of India could only provide an interim arrangement regarding the state and from this instrument of accession and in the pursuance of the above mentioned committeemen Article 370 was incorporated in the Constitution of India.

The most important point of the Instrument of Accession was that it's ruler and formal head Maharaja Hari sing decided and declared that the state of Jammu and Kashmir accede to the "Dominion of India" With a clear result that from here on "Governor General of India, the Dominion legislature, the Federal Court and any other dominion authority established for the purpose of dominion" Will be legally authorised to carry out any function in respect to the state of Jammu and Kashmir, as vested in them by or under the Government of India Act, 1935 .

However to retain its special status it added two important clause which states:

The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 , unless such amendment is accepted by me by an instrument supplementary to this instrument Nothing in this instrument shall empower the Dominion legislature to make any law for this state authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this state deem it necessary to acquire any land , I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on

such terms as may be agreed or in default of agreement, determined by an arbitrator to be appointed by Chief Justice of India

Indra-Sheikh Accord

The Indra-Sheikh Accord signed in 1975 between Kashmir leader Sheikh Abdullah and then Prime Minister of India Indra Gandhi, decided the terms under which Sheikh Abdullah would venter the politics of Kashmir. The Accord was heavily one-sided in the view of analysis as Sheikh Abdullah had no cards to play at this stage, it was viewed as a capitulation by Kashmir, however it allowed Sheikh Abdullah to became Chief Minister of Jammu and Kashmir again after 22 years and enabled competitive politics in the state

Context

The shift in power balance in the subcontinent in favour of India, following the Indian victory in the 1971 Indian-Pakistan war, led Sheikh Abdullah to the conclusion that he had little choice but to follow the terms India dictated. The India victory in Bangladesh increased Indra Gandhi status as premier in India and she dealt heavily with the Kashmiri demand for Plebiscite. She also stated that it was in conceivable to accept Sheikh Abdullah's demand for the restoration of the pre 1953 relationship between Kashmir and India because “the clock could not be put back in this manner" in 1975 Sheikh Abdullah dropped his demand that the people of Kashmir be given the right to self determination. Scholar Sumantra Bose states that Sheikh Abdullah, who popularity since 1954 arose from his position to India, would not have agreed to such terms even five years prior to Accord.

Accord

The agreement whose terms are described as amounting to a “Capitulation’’ to India, restated the conditions of Jammu and Kashmir's incorporation into India since 1953 with a “Patently hypocritical clause” that the state’s administration would be maintained under Article 370 Sumatra Bose points out that 23 constitutional orders had already been made by the mid 1970’s to integrate the state into the Union of India and 262 Union laws had been applied to the state. Despite retaining Article 370, the state was called “a constituent unit” of the Union of India. The Indian government was able to control the areas which mattered the most by being able to make laws concerning active aimed at rejecting India sovereignty. The Accord only granted the state government the right to review

the laws which specifically from the concurrent list extended after 1953 only these laws could be considered for amendment or REPEALMENT. The Accord also recognises the state's right to legislate on matters such as welfare, social and cultural issues of Muslim Personal Law.

Jammu and Kashmir state status (before the abrogation of article 370)

India's Constitution is a federal structure the subjects are divided into a "Union list, a Concurrent list and a State list" . The Union list of 96 subjects are provided for the Union Government to legislate exclusively. The state list of 66 subjects are available for the state to legislate . The concurrent list, on which both Union and states may legislate. In case of conflict the Union legislation takes priority. The Residual powers to make laws on matters not specified in the constitution rests with the Union In case of Jammu and Kashmir the Union list and the concurrent list were initially limited to the matters cede in the Instrument of Accession. Later they were extended with the concurrence of the state government. The residuary powers continued to rest with the state rather than the Union. The right to legislate an election to the state bodies also rested with the state.

Jammu and Kashmir Reorganisation Act 2019- a chance in administrative status:

The Jammu and Kashmir reorganisation Act, 2019 is an act of parliament of India containing provisions to reconstitute the state of Jammu and Kashmir, a part of the larger region of Kashmir which has been the subject of dispute among India, Pakistan and China since 1947, into two Union territories called Jammu and Kashmir and Ladakh on 31 October 2019. A bill for the Act was introduced by the Minister of Home Affairs in the Rajya Sabha on 5 August 2019 and was passed on the same day, it was then passed by the lok sabha on 6 August 2019 and it received the President's assent on 9 August 2019.

The Act recognises the state into two Union territories namely the eponymous Union territory of Jammu and Kashmir, and that of ladakh. While the former will have a legislative Assembly, Ladakh will be administered by a Lieutenant Governor alone. The Union territory of ladakh will include the districts of Leh and Kargil, while all other districts will be accorded to Jammu and Kashmir. Out of six lok sabha seats allocated to the state of Jammu and Kashmir one will be allocated to Ladakh and

five will be accorded to the Jammu and Kashmir Union territory. The High Court of Jammu and Kashmir will function as the High Court for Ladakh as well.

The Act provides that the administration of Jammu and Kashmir will be as per Article 239A of Indian Constitution. Article 239A originally formulated for the Union territory of Pondicherry, will also be applicable to Jammu and Kashmir. A Lieutenant Governor appointed by the President will administer the UT of Jammu and Kashmir which will have a legislative Assembly of 107 to 114 members with tenure of 5 years. The Legislative Assembly may make laws for any of the matters in the state list except "public order and peace" which will remain as the law making power of the Union Government. A council of ministers including a Chief Minister will be appointed by Lieutenant Governor from the members of the state legislative assembly, with the role to advise the lieutenant Governor in the exercise of functions in matters under the constituent assembly's jurisdiction. In other matters, the lieutenant Governor is empowered to act in his own capacity, which will also have power to promulgate ordinances having the same force as acts enacted by the legislature.

Research Problems:

"The Comparative Study of Administrative System in Jammu and Kashmir in the Status of State and Union Territory."

Research area.

Research area will include the several districts of both the provinces of Jammu and Kashmir including district Jammu, Rajori, Samba and the districts of Kashmir including Srinagar, Shopian, and Pulwama.

The departments include in this research are

1. Revenue.
2. defence (police administration)
3. Panchayat raj.

   Research will be conducted on bureaucrats, public representatives and citizens.

Importance of the Study:

This study will help to determine the strength and weaknesses of the government move of scraping Article 370. It will examine the administrative system of UT of Jammu and Kashmir ant to determine what specific areas they should focus more and to enhance in order to make government more response towards preparing citizen participation. A brief study on administrative system of Jammu and Kashmir after Article 370 will also help to understand the structural changes in the administrative system of Jammu and Kashmir.

This study will help the students to realise whether the knowledge and skills development bin programme would be useful to them in their future carters.
It will also encourage them to appreciate and pursue their course.

International status:

The decision of the government to scrap Article 370 is mainly a democratic, internal decision of India, with several implications for how Jammu and Kashmir is governed and administered. The question that pops into the many people's minds is does this decision have any external, international or foreign policy related dimensions. First, we should full expect Pakistan to protest this move. It is indeed a strange that, where Kashmir is concerned Pakistan is a non-status quo notion, which has Ceaselessly attempted to change the ground situation in Kashmir but when India makes its own domestic move, Pakistan is the loudest to voice its opinion against change. Was Pakistan receiving any support from the international community?
Even as some people in India label the scraping of Article 370 as the Murder of Democracy, we can be sure that there was a pushback from selected members of the comity of nations on the subject of human rights in Jammu and Kashmir. There was a criticism of curfew in Kashmir as well as the prevention detention of certain

individuals. Actors such as the OIC and UNHRC for human rights became active again.

What was needed to be careful about is that there are any members of international players who have been itching to mediate. US President Donald Trump was the only in the long list. China has in recent times been attempting to play mediator between India and Pakistan, also indicating that they are the Big Boys in the region. Secretary General of the UN Antonio Gutierrez has also, on numerous occasions in private, offered to help out on this matter, despite being told on all these occasions that the subject will be handled bilaterally.

NATIONAL STATUS

Having a unique and separate Constitution Jammu and Kashmir had occupied a special position in the whole Galaxy. A separate Flag that distinguishes the whole Jammu and Kashmir from the rest of India possessing a unique geography and climate all changed after 5 August 2019 of government move. Jammu and Kashmir became the centre of discussion in the whole world and an undemocratic move was enough to change this unique state into a common one. Central laws became applicable to the UT of Jammu and Kashmir and Ladakh which people never knew about. Administrative changes became important, this whole was important for both government as well as people of India as other states were not satisfy about this special provision.

Article 370 has revolution the whole nation, initially there were slogan about the special status from Kashmir, the opposition in the centre were against the scraping of the special status, Curfew, lockdown and prevention detention were the common practice of the government at that time. Internet and social network was the central point in controlling the uprising but at the same time it also angered and broke the sentiment of this northern region.

Objective of Research

- To study the special status of Jammu and Kashmir and why it matters.
- To Compare the administrative systems of Jammu and Kashmir before and after the abrogation of Article 370
- To study the impact of abrogation of Article 370 to Kashmir

- To study the structural changes in the administrative system of Jammu and Kashmir before the abrogation of Article 370 and after its abrogation
- To study the Kashmir is reaction after the suspension of Article 370
- To study the positive impact on Growth and stability
- To study the Global fallout of government's move to scrap Article 370 and Kashmir after 5 August 2019

Research Methodology:

Empirical-cum-statistical method of research will be applied in the proposed research work. Modern research techniques will prominently be the methodological tools to derive logical conclusion. The process of sample data selection, classification of data and their analysis, their cartographic representation and documentation will be based upon standard statistical principles. The whole study will be carried on eight phases – conceptual building phase with the help of personal observation and literary work, data collection and field work, data classification and Tabulation, data representation, data analysis, documentation and testing of hypothesis.

The process started with review of literature available on constitutional history of Jammu and Kashmir and birth of Article 370- the special status. A flying survey approach will be used to understand the reality of study area for conceptual base. Collected data will be tabulated and classified with standard statistical software and tools. Several statistical techniques like measurement of Central tendency, dispersion etc. will be used. All results will be represented by appreciate charts, diagrams and maps. All findings and results of good governance in urban and rural areas of the district will be properly documented. The final research report is followed by bibliographic references, appendices of different indices etc.

Sources of data and maps:

Primary and secondary data will be used for testing of hypothesis, analysis and representation of result of proposed research work. Primary data will be collected through sample survey. Secondary data will be collected

from different government functionaries, census reports, nongovernment organizations, e-resources, websites and several published or unpublished research.

Sample design:

Primary data will be collected from sample survey. Sample units are selected through stratified random sampling. Census 2011 will be used as sampling frame for selecting primary sampling units in to compare the administrative system of Jammu and Kashmir before and after the abrogation of special status.

HYPOTHESES:

Every advance research needs some research questions or hypothetical framework. Hypothesis in general is a statement of facts about the universe. The statement is based upon observation and flying survey approach. Empirical observation and flying survey report help the investigator in framing hypothesis.

- The status of a full constituent state is very important for welfare development.
- The reduction of Article 370 reduced the sense of development in the minds of the people.
- Attainment of Union Territory status has implications for development.
- The system also has a definite effect on the system of administration in twocomponent state status and union territory.
- Currently there is a sense of instability in the minds of the people of the Union Territory of Jammu and Kashmir due to the situation.

Scope of Research

While doing a comparative study of the administration of Jammu and Kashmir as a whole and the present union territory, mainly in this research, what were the administrative system when the whole state existed and what the current state of administration is after the creation of the union territory. What are the changes in the administration system and what effect does it have on the development of the people of the state? The state of instability created in the minds

of the people will also be studied. A special status was given to the people there but in recent times Article 370 has been cancelled and the status of the Union Territory has been given due to this the main purpose of this research is to study the change in the administration system.

While considering the scope of the research, the state of Jammu and Kashmir and then the Union Territories, how the administration system has been created, mainly the police administration revenue system as well as the rights given to the people will be studied in this research mainly the districts of Jammu and Kashmir will be studied. The situation during the state and the situation after the formation of the union territory will be studied and in this study information will be collected mainly through the interview schedule of the officials working in the administration from the highest to the lowest position and information will also be collected from the general public through the interview schedule and from it really Findings will be recorded as to whether development has been affected.

WORK PLAN / STRUCTURE OF STUDY

Year wise plan of work and targets to be achieved.

First year

To analyse the history of special status of Jammu and Kashmir that will include the citizenship act of 1927 and Instrument of Accession Birth of Article 370 and the administrative status of the state during special status Relationship between Union of India and Jammu and Kashmir through Article 370

Second year

Abrogation of Article 370 and the Jammu and Kashmir Reorganisation Act of 2019 Aim in the Change of status from state to Union territory.Administrative system of Jammu and Kashmir after the abrogation of special status and their comparison. Effect on the International relations, peace and Trade after repealing of Article 370

Third year

Questions over the special, temporary nature of Article 370.The growing tension in the Indian subcontinent over the special status of Jammu and

Kashmir.Article 370 occupied a central position in the poll manifesto

Review of Literatures

G. Nooraani (2011) gives a constitutional history of Jammu and Kashmir and birth of Article 370- the special status. A brief discussion has been discussed about the relationship of Union of India with the state of Jammu and Kashmir, the division of subjects and the recognition of distinct status of the state. A descriptive analysis was performed on data obtained from Constitution of India, Constitution of Jammu and Kashmir and from the primary sources as well.

Mirdu Rai (2004), Hindu rulers, Muslim subjects. A perspective study that argues that the origins of present conditions and problems in Kashmir life in the hindered year period preceding the creating of India and sovereignty over a subject Muslim populace. A qualitative study had been taken coupled with census and face-to-face interaction. Bothe primary and secondary data.

Khurshid Ah Bhat (2017) , examined the Article 370 , a legal status of constitutional relationship of state of Jammu and Kashmir with Union of India, the most important work of the author dealing in a most elaborated manner with legal status of constitutional relationship of the state of Jammu and Kashmir with Union of India.

M. Farooq(2020) , reported the assessment of Modi's Kashmir, the suspension of Article 370 . Kashmir Masterstroke under the Hindutva ideology and has proven to be a massive flop. This is the in depth study after the abrogation and has find the loopholes of the contemporary government.

Prabhash k. Dutta(2020) the present study examined how Modi government changed the status of Kashmir a year ago. How this move fulfilled a long cherished demand of the RSS -BJP, who were campaigning against the special status of Jammu and Kashmir and jolt the Democratic part of Indian Constitution.

Researcher **Guide**

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